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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

BARTON RHETT WILLIAMS,

Defendant and Appellant.

H046557

(Santa Clara County

Super. Ct. No. C1230617)

Defendant Barton Rhett Williams has sought appellate review multiple times after being convicted by a jury of first degree murder. (Pen. Code, s 187, subd. (a).) The underlying facts are summarized in this court’s opinions in defendant’s earlier appeals in *People v. Williams* (Apr. 2, 2018, H042903) [nonpub. opn.] (H042903). As we explained on those occasions, the victim was defendant’s wife, who died from her injuries after he set her on fire.

Among the issues raised in defendant’s first appeal in H042903 was the sentence enhancement for his prior felony convictions in Oregon—one for first degree burglary and one for first degree robbery—which the trial court had deemed strikes under the Three Strikes law. This court originally affirmed, but upon remand from the Supreme Court, we vacated that decision and followed *People v. Gallardo* (2017) 4 Cal.5th 120 in reviewing the trial court’s treatment of both Oregon convictions. With respect to the prior burglary, the trial court had engaged in impermissible judicial factfinding at sentencing by relying on the police report to determine that the structure defendant

entered was currently being used for dwelling purposes, rather than considering only those facts “that the defendant admitted as the factual basis for a guilty for a guilty plea.” (*Id.* at p. 136.) Likewise, the trial court had engaged in judicial factfinding in determining that defendant committed a robbery as defined in California.

At the resentencing hearing on September 21, 2018, the superior court imposed a single term of 25 years to life, plus a consecutive one-year term attributable to a prison prior. (Pen. Code, s 667.5, subd. (b).) Both parties concurred in that disposition. Subsequently, at appellate counsel’s request, the court corrected the abstract of judgment to reflect additional sentence credits; thus, the total credits included 2,348 days to the date of sentencing. Appellant filed a timely notice of appeal from the amended judgment.

Appointed appellate counsel has filed an opening brief that states the case and the facts but raises no issues. Defendant was notified of his right to submit written argument on his own behalf, and he has done so. Defendant asks this court to review the testimony of the neuropsychologist who testified at his jury trial. He suggests that because the witness, Dr. Karen Froming, “didn’t reach any conclusions that . . . showed [his] mental state at the time of the crime,” the jury might have been able to “come to a different conclusion and show the alleged [*sic*] murder was an accidental and unfortunate occurrence [*sic*].”

We cannot accommodate this request, however. Issues related to defendant’s intent in committing the crime, including the jury instructions and the prosecutor’s comments on the evidence, were raised and discussed by both parties at trial and in defendant’s first appeal. The focus of the Supreme Court’s direction in remanding this case for reconsideration was solely for application of *Gallardo* in considering the effect of the Oregon prior convictions on the proper sentence. In this court’s second opinion, we directed the trial court to determine whether those prior convictions could properly be deemed strikes. The trial court followed the law at resentencing and imposed only a single term of 25 years to life for the murder. We decline to indulge in speculation

regarding how the jury might have used Dr. Froming's testimony to decide that the murder was instead "an accidental and unfortunate occur[r]ence." Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we have reviewed the entire record and have concluded that there are no further arguable issues on appeal.

The judgment is affirmed.

ELIA, ACTING P.J.

WE CONCUR:

BAMATTRE-MANOUKIAN, J.

MIHARA, J.